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No. 00-536

IN THE

SUPREME COURT OF THE UNITED STATES

JAMES H. HOLBROOK,
Petitioner,

versus

LOBDELL-EMERY MANUFACTURING COMPANY,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals, Seventh Circuit Sitting as the Law Court

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PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Should an employer, under the theory of respondeat superior, be held accountable for the conduct of its supervisors, where the supervisors, by outrageous conduct, intentionally caused severe emotional distress to a mentally ill employee?

LIST OF PARTIES

The parties to the proceedings below were the petitioner, James H. Holbrook and the respondent, Lobdell-Emery Manufacturing Company.

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PETITION FOR A WRIT OF CERTIORARI

The petitioner respectfully requests that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals, Seventh Circuit, Sitting As The Law Court, entered in the above-entitled proceeding on July 6, 2000.

OPINIONS BELOW

The opinion of the United States Court of Appeals, Seventh Circuit has been reported and is reprinted in the appendix hereto, pp. 10a-15a, *infra*.

The opinion of the United States District Court, Southern District of Indiana, New Albany Division has not been reported and is reprinted in the appendix hereto, pp. 1a-9a, *infra*.

JURISDICTION

The judgment of the United States Court of Appeals, Seventh Circuit was entered on July 6, 2000. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. sec. 1254.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Article III, Section 2 of the United States Constitution provides in pertinent part as follows: "The judicial power shall extend to all cases, in law and equity, . . . between citizens of different states; . . ."

STATEMENT OF THE CASE

A. Statement of Facts

The petitioner, James H. Holbrook ("Holbrook"), went to work for the respondent, Lobdell-Emery Manufacturing Company ("Lobdell-Emery") at its Indiana plant sometime in 1990. Holbrook lived across the Ohio River in Kentucky. Due to severe depression and psychosis, he was hospitalized in 1993. Upon his return to work, supervisors and coworkers, knowing of his hospitalization and illness, called him names, such as "crazy," "queer," and stated to him he was "not right in the head" and commented about his being in the "nut house." They bid his tools, glued his tool box and set fire to a rag in his back pocket This behavior continued until January 29, 1997, when Holbrook was terminated for fighting. Although Holbrook had reported these incidents over the years to his supervisors and their superiors, no action was take by any of them to stop the harassment. Shortly thereafter Holbrook was hospitalized.

B. Proceedings Below

Holbrook brought a tort action against Lobdell-Emery for intentional infliction of emotional distress, which required the showing of outrageous conduct intentionally inflicted causing severe emotional distress. The district court found the incidents to be "unthoughtful and boorish," "unkind, cruel and disheartening," "not at all uncommon in today's workplace," . . . "but clearly not outrageous." The District Judge also rejected the theory of "respondeat superior" holding Lobdell-Emery was not liable for the acts of its supervisors in conformity with Indiana law and granted summary judgment for the respondent.

The Court of Appeals, although writing "It is not difficult to imagine that a jury would exclaim 'Outrageous!' upon hearing that Holbrook's co-workers taunted him and set him on fire knowing he had recently been released from a hospital where he was being treated for severe depression and psychosis", would not extend the wrongdoing to the employer and permit the case to go to a jury. The District Court's granting of summary judgment was affirmed.

REASONS FOR GRANTING THE WRIT

I. State And Federal Courts Are Clearly Divided On The Application Of The Theory Of Respondeat Superior In The Workplace

The concept of a federal general common law was rejected in *Erie R. Co.* v. *Tompkins,* 304 U.S. 64 (1938). This case directed that federal courts sitting in diversity cases apply the substantive law of the forum State. In this case, Indiana law rejects the theory of respondeat superior for the tortious behavior by supervisors and co-workers. However in recent years, there have been a series of federal cases which have not rejected the theory. *Spark* v. *Pilot Freight Carries, Inc.,* 830 F.2d 1554 (11th Cir. 1987) broad-

ened the scope of an employer's liability as a result of the conduct of supervisors. *Sparks,* 830 F.2d at 1558-59.

A broadened general agency theory was adopted in *Spencer* v. *General Electric Co.,* 894 F.2d 65 1 (4th Cir. 1990) which broadly defined "employer" to include any "agent" of the employer in the spirit of Title VII cases. *Spencer,* 894 F.2d at 657.

It was held in *Highlander* v. *KFC Nat'l Management Co.,* 805 F.2d 644 (6th Cir. 1986) that an employer is strictly liable for the conduct of its supervisory employees. This was a sexual harassment case. Here the Court reasoned that because "Title VII defines 'employer' to include 'a person engaged in industry affecting commerce and any agent of such person,' knowledge of an employment decision based on impermissible sexual factors is imputed to the employer." *Highlander,* 805 F.2d at 649.

II. THERE IS A COMPELLING NATIONAL INTEREST FOR THE PROTECTION OF THE MENTALLY ILL IN THE WORKPLACE

The supervisors and co-workers of Holbrook, with knowledge of Holbrook's mental illness, harassed, humiliated and disgraced him daily to the extent that there was a constructive policy of the employer for this conduct. Employers have been held accountable in harassment and discrimination cases. The health, safety and welfare of the work force in the United States, especially those workers who are disabled, have had the protection of this Court since the early years of the twentieth century. To extend the theory of respondeat superior to the employer in this case would keep the trust of those who have written on this issue while a member of this Court.

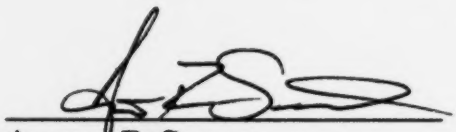
To protect the mentally ill against conduct outrageous and atrocious in character, which goes beyond all possibly bounds of decency and is totally unacceptable in a civilized

community, is a matter so compelling in the national interest as to demand the application recent rulings cited herein as a resolution of evolving issues in the law relating to the theory of respondeat superior.

CONCLUSION

The theory of respondeat superior should be broadened to apply in cases where outrageous conduct has occurred by the intentional infliction of emotional distress. Holbrook's mental illness is the basis for the conduct stipulated herein to meet the standard of being outrageous. I urge the Court grant the petition in this case and remand this case to the District Court for a jury trial.

Respectfully submitted,



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